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Hirokazu Sakai

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT

PAPER NUMBER

1619

NOTIFICATION DATE

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ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

Claims 1-8 and 10-12, 14, and 16-21 are rejected under 35 U.S.C. 103(a) as being obvious over the combination of EP 1,166,766 ('766) and U. S. patent 5,876,705 ('705).

*The instant application is claiming hair cleansing composition comprising:*

- 1. Amphipathic amide lipid of formula 1*
- 2. compound belonging to B(species is ethylene glycol distearate)*
- 2. surfactant*
- 3. cationic polymer*

EP '766 teaches external preparation compositions. See the abstract, and see page 2, formula I for ingredient I claimed. see also pages 3-5 for the amide lipids , which are species belonging to formula I ( Ingredient 1). EP '766 at paragraph 22 teaches adding surfactants to compositions. The weight percent of the surfactant is 0.01-20% and the weight percent of amide lipid 0.001-50%. EP '766 at paragraph 24 teaches hair care applications and this includes shampoo. EP under this paragraph suggests adding components ordinarily employed in hair cosmetics. Examples 3-4 are drawn to hair formulations. The difference between EP and the instant application is EP does not teach claimed species belonging to B and cationic polymer.

Patent '705 teaches conditioning shampoo compositions. See the abstract; see col.2, ll 25-30 for anionic, amphoteric and non-ionic surfactant. See col.s 4-5 and col.6, ll 1-34 for anionic surfactant. See col.6, ll 35-68 and col.s 7-8 and col.9, ll 1-6 for amphoteric surfactant, see col.9, ll 8-68 and col.10, ll 1-14 for non ionic surfactant, see col. 17, line 7 through col.19, line 27 for cationic polymers. Patent at col.2, ll 35-39 teaches conditioning agents and these can be

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silicones or cationic surfactant or cationic polymers. see col.19, ll 5-20 for claimed cationic cellulose and cationic guar gum. See paragraph bridging col.s 21-22 for suspending agents. Preferred suspending agent is claimed species(see col.21, ll 60-65). See also examples VI-X for ethylene glycol distearate, cationic polymer, which is polyquaternium 10 and surfactant.

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the compositions of EP '7669 and combine with agents that are conventionally used in hair care like surfactants , cationic polymers and suspending agents taught by patent '705 expecting beneficial effect to hair. One of ordinary skill in the art would be motivated to add the ingredients of '705 with the reasonable expectation of success that the compositions which has the diamide provide moisturizing feel and silkiness to the hair and adding cationic polymers provide conditioning property to the hair and adding surfactant provide cleansing actions. Thus the compositions not only cleanse the hair but also provide moisturizing and conditioning properties to the hair. This is a prima facie case of obviousness.

### ***Response to Arguments***

Applicant's arguments filed 8/6/09 have been fully considered but they are not persuasive.

Applicants' argue that patent '705 describe that ethylene glycol stearate as a dispersant for a silicone hair conditioning agent and the dermatologic preparation of EP'766 fails to disclose a silicone hair conditioning agent and thus there would be no motivation to add the dispersant for a silicone hair conditioning agent of patent '705 into the dermatologic preparation of EP'766 as suggest in the official action, at an (A):(B) ratio of 5:1 to 1:1,000, as EP composition does not contain a silicone hair conditioning agent.

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As admitted by the examiner EP does not teach silicone “hair conditioning agent”. However the expression “comprising” in the claims is inclusive of silicone hair conditioning agent of Patent ‘705 since the use of the term “comprising” permits the presence of other ingredients and does not preclude the presence of other ingredients, active or inactive, even in major amounts. Moleculon Research corp., v. CBS, Inc., 793 F. 2d 1261, 229 USPQ 805 (FED. Cir. 1986); In re Baxter, 656 F. 2d 679, 210 USPQ 795, 803 (CCPA 1981).

Applicants’ also argue that there is no structural similarity between silicone hair conditioning agent and amphipathic amide lipid and therefore there is no motivation to use the suspending agent of patent ‘705 into the compositions of EP ‘766.

In response to the above argument, EP ‘766 at [0023] teaches using the amphipathic amide lipid in shampoos and at [0024] teaches that the hair cosmetics’ contain surfactants and in addition components **ordinarily employed for hair cosmetics (emphasis added)**. The suspending agent of patent ‘705 (*ethylene glycol distearate* drawn to components B of instant application and it is the elected species) is conventionally used in shampoos. See XP-002295514, PP 65-69 “cleansing and conditioning hair” (1998) and see hair shampoos. This article **is prompted by applicants’ remarks**. Applicants’ attention is drawn to table 2-3. Article teaches *ethylene glycol distearate* as opacifiers. The compound taught by the article and patent ‘705 are the same. therefore one of ordinary skill in the art would be motivated to add the suspending agent of patent ‘705 drawn to ethylene glycol distearate since this compound is conventionally used in hair cosmetics and EP ‘766 teaches adding ordinarily employed ingredients for shampoo and other hair cosmetics.

Table 1

					(Unit of content is %)	
		Examples			Comparative Example	
		1	2	3	1	2
(A)	Amphipathic amide lipid A	0.5	-	0.5	-	-
	Amphipathic amide lipid B	-	0.1	-	2	-
(B)	Ethylene glycol distearyl ester	2	-	-	-	-
	Distearyl ether	-	2	2	-	-
Others	Sodium polyoxyethylene (2) lauryl ether sulfate	10	10	10	10	-
	Sodium lauryl sulfate	5	5	5	5	-
	Cocoyl monoethanolamide	0.5	0.5	0.5	0.5	-
	Cationic hydroxyethylcellulose	0.3	0.3	0.3	0.3	-
	Cationic guar gum	0.5	0.5	0.5	0.5	-
	50 wt % aq. NaOH soln/50 wt % citric acid	q.s. *	q.s. *	q.s. *	q.s. *	-
	Purified water	Balance	Balance	Balance	Balance	-
pH		3.5	3.5	3	3.5	-
Buffering capacity (NaOH-gram equivalent/L)		0.02	0.01	0.01	0.01	-
Evaluation	Resilience and strength of hair	3.1	2.7	3.9	1.8	-
	Smoothness of hair	3.8	3.6	3.8	2.1	-
	Moist feeling of hair	3.8	3.7	3.8	2.2	-
	Storage stability (50°C * 1 month)	A	A	A	C	-

\*: amount enough for pH adjustment

Applicants' argue with respect to results at table 1 ( see above) and point out that Example 1 ( table 1) containing amphipathic amide lipid A and ethylene glycol distearyl ester exhibited high evaluation for hair conditioning performance in terms of resilience and strength of hair, smoothness of hair and moist feeling of hair plus, no change in appearance upon storage at 50°C for one month and Example 2 containing amphipathic amide lipid B and distearyl ether exhibited high evaluation for hair conditioning performance in terms of resilience and strength of hair, smoothness of hair and moist feeling of hair plus, no change in appearance upon storage at

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50°C for one month where as , comparative example 1, having amphipathic amide lipid B but no ethylene glycol distearyl ester exhibited lower hair care performance and exhibited separation or gelation upon storage at 50°C for one month and point out that example 2 and comparative example 1 each contained the same amphipathic amide lipid B, but example 2 which further comprised distearyl ether, but a smaller amount of amphipathic amide lipid B demonstrated enhanced resilience and strength of hair, smoothness of hair and moisture feeling of hair.

In response to the above argument, the test results in table 1 is not commensurate with the scope of claims. None of the claims show the specific combination of surfactants and cationic polymers and specific amphipathic lipid amide and elected ethylene glycol distearate in specific weight percent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/JYOTHSNA A VENKAT /  
Primary Examiner, Art Unit 1619